

PART 3 CONTRIBUTION LAUNDERING/THIRD-PARTY TRANSFERS

Chapter 20: Overview and Legal Analysis

FINDING

A number of individuals in both the Republican and Democratic parties made contributions to candidates for federal office and political parties through persons who were eligible to contribute, in apparent violation of the Federal Election Campaign Act.

OVERVIEW OF FOLLOWING CHAPTERS

The Federal Election Campaign Act (“FECA”) mandates public disclosure of campaign contributors and their contributions, a requirement which the Supreme Court has upheld as a constitutional means to deter corruption, inform voters and detect violations of law.¹ Section 441f of Title 2 of the U.S. Code provides:

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.²

This provision creates three separate prohibitions: (1) it prohibits a contributor from disguising a contribution by using another person as a conduit; (2) it prohibits anyone from knowingly agreeing to serve as a conduit; and (3) it prohibits campaign organizations and candidates from knowingly accepting a conduit contribution. These prohibitions help guarantee that persons barred from making campaign contributions do not evade the applicable legal restrictions by making contributions in the name of another, and help prevent persons from circumventing the public disclosure requirements by offering their money in someone else’s name rather than their own.

The Committee investigated a number of allegations that contributions made to political parties or candidate committees were paid for by hidden donors. As the following chapters demonstrate, the investigation gathered convincing evidence that, during the 1996 election cycle, a number of individuals laundered funds through third parties when making contributions to Republicans and Democrats. In some cases, the laundered funds came from abroad; in others the laundered funds were American dollars. Some contributions were for \$1,000; one went as high as \$500,000. The evidence shows that unpaid fundraisers for both parties, such as Charlie Trie and Simon Fireman, participated in contribution laundering schemes.

The following chapters describe a variety of contribution laundering schemes. The evidence includes three companies, Aqua-Leisure Industries, Empire Sanitary Landfill, and DeLuca Liquor and Wine, which appear to have laundered corporate funds through employees to make more than \$275,000 in contributions to the Republican Party. One company, owned by Simon Fireman, vice chairman of finance for the Dole for President campaign, laundered corporate funds

through a secret Hong Kong trust before supplying cash to company employees who wrote checks made out to the campaigns Fireman selected. Also examined is the Hsi Lai Buddhist Temple which appears to have reimbursed temple monastics and supporters for contributions totalling \$65,000 to the Democratic National Committee. Contributions orchestrated by a family of Democratic Party supporters, the Lums, and their subsequent criminal convictions are examined, as well as \$253,500 in contributions to the DNC which Pauline Kanchanalak held out as her personal contributions when, in fact, the funds were provided by her mother-in-law, Praitun Kanchanalak (who was also eligible to contribute). The chapters also examine contributions from two apparently insolvent individuals, Yogesh Gandhi, who gave \$325,000 to the DNC, and Michael Kojima, who in 1992 gave \$500,000 to the Republican Party, both of which were apparently financed with foreign funds from Japan. Democratic Party contributions totalling about \$425,000 by the Wiriandinatas may have originally derived from abroad, but appear to be legal because they were personal funds and no foreign national participated in the contribution decisions. Additional information about possible conduit contributions from foreign funds is discussed in Part 1 of this Minority Report which focuses on foreign influence in the last election cycle.

The Committee received no evidence that any candidate or party employee, other than Simon Fireman, Representative Jay Kim of California, and possibly John Huang, knowingly solicited or accepted a laundered contribution. The evidence also shows that, in some instances, fundraisers or party officials had warning signs that particular contributions were suspect. In too many cases involving large sums of money, these warning signs were ignored and inadequate procedures were used to verify the contributor and the contribution, resulting in improper or illegal contributions entering the campaign finance system.

LEGAL ANALYSIS

The basic principle underlying the prohibition on contributions in the name of another is that campaign contributions must be accurately disclosed to the public. For that reason, the prohibition applies even if the underlying contribution would have been legal, but for the fact that it was disguised as the contribution of another.

Establishing violations of section 441f often involves determining the source of funds used for a contribution, ownership of those funds, and whether the funds were provided to the contributor of record for the purpose of making a disguised contribution. These determinations are sometimes straightforward and can be established through the testimony of the conduit or through bank records documenting the movement of funds from a third party to the contributor of record to the campaign organization. Other times, these determinations are difficult, particularly if the contributor insists that no third party was involved or that the funds used for the contribution were validly obtained.

For example, an American citizen or legal resident who earns money working abroad, or receives money from a foreign national or foreign corporation in a business transaction, may be able to establish that the money was personal income which can be lawfully used for a campaign

contribution. Similarly, an American citizen or legal resident who makes a campaign contribution with money received from a family member who is a foreign national, may be able to demonstrate that the money was a personal gift, the family member played no role in the contribution decision, and the contribution was in compliance with the law. In contrast, while an American citizen or legal resident can establish personal ownership of funds provided from abroad and use those funds for a campaign contribution, U.S. subsidiaries of foreign corporations are completely barred from using foreign money to pay for a corporate contribution.³ The FEC requires U.S. subsidiaries to be able to “demonstrate through a reasonable accounting method that it has sufficient funds in its account, other than funds given or loaned by its foreign national parent,” to pay for its campaign contributions.⁴ In contrast, U.S. corporations that are not subsidiaries of foreign companies may use foreign funds to finance their campaign contributions, so long as they are not acting as conduits for another.

One significant problem with the current wording of section 441f severely limits its usefulness. As currently worded, each of the section’s prohibitions rely on the word “contribution.” Because “contribution” is defined in 2 U.S.C. 431(8) in terms of hard money contributions, section 441f’s prohibition on contributions in the name of another may not apply to any of the soft money conduit contributions examined by this Committee. Until corrective legislation is enacted, it is not clear that individuals who make soft money contributions through conduits could be successfully prosecuted or fined under the current law despite the fact that such actions violate the intent of existing law.

NOTES

1. Buckley v. Valeo, 424 U.S. 1, 66-67 (1976).

2. 2 U.S.C. §441f.

3. FEC Advisory Opinion 1992-16.

4. *Ibid.* See also, legal analysis of foreign contributions in Part 1, supra.